



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2014-0987]

RIN 1625-AA11

Regulated Navigation Area; Herbert C. Bonner Bridge, Oregon
Inlet, NC

AGENCY: Coast Guard, DHS.

ACTION: Interim final rule; and request for comments.

SUMMARY: The Coast Guard is establishing a Regulated Navigation Area (RNA) on the navigable waters of Oregon Inlet, NC surrounding the Herbert C. Bonner Bridge. This RNA will allow the Coast Guard to enforce vessel traffic restrictions within the RNA when necessary to safeguard people and vessels from the hazards associated with potential catastrophic structural damage that could occur due to vessel allisions with the bridge.

DATES: This rule is effective without actual notice on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]. For the purposes of enforcement, actual notice will be used from November 25, 2014 until [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

Comments and related material must be received by the Coast Guard on or before [INSERT DATE 60 DAYS AFTER DATE OF

PUBLICATION IN THE FEDERAL REGISTER].

Requests for public meetings must be received by the Coast Guard on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Documents mentioned in this preamble are part of Docket Number USCG-2014-0987. To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number in the "SEARCH" box and click "SEARCH." Click on "Open Docket Folder" on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

You may submit comments, identified by docket number, using any one of the following methods:

(1) Federal eRulemaking Portal:

<http://www.regulations.gov>.

(2) Fax: (202) 493-2251.

(3) Mail or Delivery: Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590-0001. Deliveries accepted between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays. The telephone number is

202-366-9329.

See the "Public Participation and Request for Comments" portion of the SUPPLEMENTARY INFORMATION section below for further instructions on submitting comments. To avoid duplication, please use only one of these three methods.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail LT Derek Burrill, Waterways Management Division Chief, U.S. Coast Guard Sector North Carolina, telephone (910) 772-2230, email Derek.J.Burrill@uscg.mil. If you have questions on viewing or submitting material to the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone (202) 366-9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

COTP	Captain of the Port
DHS	Department of Homeland Security
FR	Federal Register
RNA	Regulated Navigation Area

A. Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided.

1. Submitting comments

If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online at <http://www.regulations.gov>, or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov>, type the docket number in the "SEARCH" box and click "SEARCH." Click on "Submit a Comment" on the line associated with this rulemaking

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material

received during the comment period and may change the rule based on your comments.

2. Viewing comments and documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

3. Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the Federal Register (73 FR 3316).

4. Public meeting

We do not now plan to hold a public meeting. But you may submit a request for one on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], using one of the

methods specified under ADDRESSES. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the Federal Register.

B. Regulatory History and Information

The Coast Guard is issuing this interim final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest."

Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule. Immediate action is necessary to protect the maritime public who transit Oregon Inlet and motorists that use the Herbert C. Bonner bridge. Vessel strikes to the Herbert C. Bonner Bridge could cause catastrophic damage to the bridge makes immediate action necessary to minimize the risk of potential loss of life, damage to the bridge, and the impact on access to Hatteras Island. Accordingly, waiting for a comment period to run is impractical as it would expose the public to a longer danger period.

The particular facts about the Bonner Bridge and the waterway require special vessel traffic control measures. A bridge strike by a vessel could cause catastrophic damage to the bridge, impacting motorists, mariners, local businesses and residents of Hatteras Island, NC. The North Carolina Department of Transportation (NC DOT) indicates that the Bonner Bridge has a very low sufficiency rating. Sufficiency rating is an overall rating of a bridge's fitness for the duty that it performs. In addition, recent hydrographic survey data reports indicate shoaling is present in the vicinity of the navigation span. When such shoaling is present, the Coast Guard has observed vessels attempting to transit through alternate spans of the Herbert C. Bonner Bridge. Transiting through alternate spans is hazardous as they are not intended for navigation. The unfendered or unprotected structural components of the bridge among these spans are more vulnerable to damage caused by a vessel strike, increasing the risk of consequent catastrophic damage.

For the same reasons as discussed above, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the Federal Register.

C. Basis and Purpose

This rulemaking is authorized by 33 U.S.C. 1231; 46 U.S.C.

Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, 160.5; Pub. L. 107-295, 116 Stat. 2064; and DHS Delegation No. 0170.1. Under these authorities the Coast Guard may establish an RNA in defined water areas that are determined to have hazardous conditions and in which vessel traffic can be regulated in the interest of safety. The purpose of this RNA is to reduce the risk of a bridge strike resulting from a vessel transiting through alternative spans of the Herbert C. Bonner Bridge, which are not intended for navigation. A bridge strike to un-fendered or unprotected structural elements of the Bonner Bridge would introduce a clear and present danger to stability of the bridge, motorists, mariners, and indirect impacts on local businesses and residents of Hatteras Island, NC.

U.S. Army Corps of Engineers (USACE) hydrographic survey data provide to the Coast Guard over the past two years indicates shoaling to depths of less than 3 feet at mean low water within the approaches to the Bonner Bridge on a frequently occurring basis. When shoaling is present in the vicinity of the navigation span, vessels attempt to transit through alternate spans. Transiting through alternate spans is hazardous. Mariners transiting near and through the unprotected structural components increase the potential of a bridge strike; these spans do not have fenders or other mechanisms to protect the bridge from vessel strikes. Vessels that transit alternate

bridge spans risk safe navigation as there are no advertised vertical and horizontal clearances in these areas.

The Coast Guard has also considered the North Carolina Department of Transportation (NC DOT) recent biennial bridge inspection in accordance with National Bridge Inspection Standards (NBIS) for the Herbert C. Bonner Bridge. This report takes into account the substructure and superstructure inspections along with analysis of the maritime navigational and motor vehicle concerns. The report noted weakened pile supports as a result of section loss and substructure erosion to the point of showing exposed rebar. Information provided to the Coast Guard by NC DOT indicates that the Herbert C. Bonner Bridge has a very low sufficiency rating. Due to the dynamic nature of Oregon Inlet waterway, frequent dredging and realignment of the approach channel east of the bridge have become routine. Passage of hurricanes and strong low pressure systems, i.e. Nor'easters exacerbate tidal current and the seasonal fluctuations of the inlet's water depths. Maintenance of adequate depth and adequate channel alignment is a temporary measure that typically provides for safe vessel navigation for a very limited time period for safe vessel navigation. Maintenance dredging of the Federal Navigation Project is dependent on available funding, marine weather dredging windows, and channel condition surveys. Because many of these factors

are uncontrollable, dredging operations are not regularly scheduled maintenance activities.

The Herbert C. Bonner Bridge is the only vehicular access to Hatteras Island for residents, commercial vendors, and business owners transiting from Nags Head-Bodie Island to Hatteras Island. The Bonner Bridge is subject to heavy traffic volume, particularly during the summer tourist season. Risks to the lives of mariners, vehicle motorist and passengers, have been considered in the development of this rulemaking.

D. Discussion of the Interim Rule

To address the aforementioned hazards, this rule will establish restrictions for the Oregon Inlet waterway by prohibiting vessels with certain characteristics from transiting under or within 100 yards either side of the Herbert C. Bonner Bridge. The Coast Guard invites comments and will consider comments in development of a final regulation. This RNA will be effective with actual notice for purposes of enforcement on November 25, 2014. The restrictions for navigation will be enforceable 24 hours a day as long as this RNA is in effect. The Coast Guard will enforce the restriction, however, only when necessary to protect people and vessels from hazards. As indicated above, the Coast Guard expects to restrict marine traffic if there is shoaling that impacts safe vessel transit through the navigation span, or there is damage to the bridge

that presents a hazard to people and vessels.

There are alternate routes for vessels bound for Oregon Inlet, North Carolina and inland waterfront communities, including Wanchese, NC. Those alternate routes include transiting through Beaufort Inlet or Chesapeake Bay and the Atlantic Intracoastal Waterway and Sounds of North Carolina. The distance from Oregon Inlet Lighted Whistle Buoy "OI" to Wanchese, North Carolina via Beaufort Inlet, the Atlantic Intracoastal Waterway and Pamlico Sound is approximately 190 nautical miles. The distance from Oregon Inlet Lighted Whistle Buoy "OI" to Wanchese, North Carolina via Chesapeake Bay, the Atlantic Intracoastal Waterway and Albemarle Sound is approximately 200 nautical miles.

Whenever it is determined that a waterway restriction for Oregon Inlet is necessary, the Coast Guard will provide the public with as much advanced notice as possible of the closure dates and times. Such notice will be readily provided via <http://homeport.uscg.mil/>, Local Notice to Mariners, Broadcast Notice to Mariners, and other methods described in 33 CFR 165.7.

E. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on these statutes and executive orders.

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

This regulation will restrict access within the Regulated Navigation Area at Oregon Inlet and the Herbert C. Bonner Bridge, the effect of this rule will not be significant because: (i) the Coast Guard will make extensive notifications of the regulated area to the maritime public via maritime advisories so mariners can adjust their plans accordingly; and (ii) vessels impacted by this regulation may request permission from Commander Coast Guard Sector North Carolina / COTP North Carolina to transit the regulated area on a case by case basis.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. The regulation may have

an economic impact on vessels that normally transit Oregon Inlet. These small entities are primarily commercial and recreational fishing vessels. Operation of vessels of certain characteristics in this RNA will be prohibited from transiting Oregon Inlet by the Captain of the Port (COTP) or designated representative when shoaling in the vicinity of the Herbert C. Bonner Bridge creates unsafe condition for vessels. The potential risk of loss of life, damage to the bridge, and the impact on access to Hatteras Island outweighs the benefits of permitting navigation in the vicinity or under the Bonner Bridge.

Although the Oregon Inlet area is used by many small entities, including commercial and recreational fishing businesses, alternate routes are available to vessels. The Coast Guard will make extensive notifications of the regulated navigation area to the maritime public via maritime advisories so mariners can adjust their plans accordingly; and in extreme circumstances, vessels prohibited from entry may request permission from Commander Coast Guard Sector North Carolina / COTP North Carolina to transit the RNA on a case by case basis.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the

rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT, above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

4. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We

have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the "For Further Information Contact" section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children from Environmental Health Risks

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

This action is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves establishment of a Regulated Navigation Area. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2-1 of the Commandant Instruction. Preliminary environmental analysis checklist supporting this determination and Categorical Exclusion Determination are available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures and Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165--REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS.

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.520 to read as follows:

§ 165.520 Regulated Navigation Area; Herbert C. Bonner Bridge, Oregon Inlet, NC.

(a) Regulated area. The following area is a Regulated Navigation Area (RNA): All navigable waters of Oregon Inlet, North Carolina within 100 yards under or surrounding any portion of the Herbert C. Bonner Bridge.

(b) Definitions. As used in this section:

(1) Captain of the Port means the Captain of the Port (COTP) North Carolina.

(2) Captain of the Port Representative means any Coast Guard commissioned, warrant, or petty officer who has been authorized

by the Captain of the Port North Carolina to act as a designated representative of the COTP.

(3) Official patrol vessel means any Coast Guard, Coast Guard Auxiliary, state, or local law enforcement vessel(s) assigned and authorized by COTP North Carolina.

(c) Regulations. (1) The general regulations governing Regulated Navigation Areas found in 33 CFR 165.10, 165.11, and 165.13, including the Regulated Navigation Area described in paragraph (a) of this section and the following regulations, apply.

(2) Operation of vessels of certain characteristics in this RNA will be prohibited by the Captain of the Port (COTP) or designated representative in order to safeguard people and vessels from the hazards associated with shoaling and the Herbert C. Bonner Bridge from the potential catastrophic structural damage that could occur from a vessel bridge strike. The COTP or designated representative will evaluate local marine environmental conditions prior to issuing restrictions regarding vessel navigation. Factors that will be considered include, but are not limited to: hydrographic survey data, vessel characteristics such as displacement, tonnage, length and draft, current weather conditions including visibility, wind, sea state, and tidal currents.

(3) The Coast Guard will notify the public of restrictions via Local Notice to Mariners, Broadcast Notice to Mariners, and via other methods described in 33 CFR 165.7. Additionally, Coast Guard personnel may be on-scene to advise the public of enforcement of any restrictions on vessel navigation within the RNA.

(4) In accordance with the general regulations, entry into, anchoring, or movement within the RNA, during periods of enforcement, is prohibited unless authorized by the Captain of the Port (COTP) or the COTP's on-scene designated representative. The ``on-scene designated representative'' of the COTP is any Coast Guard commissioned, warrant or petty officer who has been designated by the COTP to act on the COTP's behalf. The on-scene representative may be on a Coast Guard vessel; State agency vessel, or other designated craft; or may be on shore and will communicate with vessels via VHF-FM marine band radio or loudhailer. Members of the Coast Guard Auxiliary may be present to assist COTP representatives with notification of vessel operators regarding the contents of this regulation.

(5) Any deviation from paragraph (c)(4) of this section due to extreme circumstances must be authorized by the Coast Guard District Commander, the Captain of the Port (COTP) or the COTP's designated representative. Vessels granted permission to transit the RNA must do so in accordance with the directions

provided by the COTP or COTP representative to that vessel. To request permission to transit the regulated navigation area, the COTP or COTP representative can be contacted at Coast Guard Sector North Carolina, telephone number (910) 343-3880, or on VHF-FM marine band radio channel 13 (165.65MHz) or channel 16 (156.8 MHz). During periods of enforcement, all persons and vessels given permission to enter or transit within the RNA must comply with the instructions of the COTP or designated representative. Upon being hailed by an official patrol vessel by siren, radio, flashing-light, or other means, the operator of a vessel must proceed as directed.

(d) Enforcement. The Coast Guard may be assisted in the patrol and enforcement of the Regulated Navigation Area by other Federal, State, and local agencies. The COTP may impose additional requirements within the RNA due to unforeseen changes to shoaling of Oregon Inlet or structural integrity of the Herbert C. Bonner Bridge.

(e) Notification. The Coast Guard will rely on the methods described in 33 CFR 165.7 to notify the public of the date, time and duration of any closure of the RNA. Violations of this RNA may be reported to the COTP at (910) 343-3880 or on VHF-FM channel 16.

Dated: November 25, 2014

STEPHEN P. METRUCK
Rear Admiral, U.S. Coast Guard
Commander, Fifth Coast Guard District

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Date: 12/17/2014]